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No. _____

In The
Supreme Court of the United States
February Term, 2000

NEIL R. BROWN,
Petitioner,
vs.
UNITED STATES OF AMERICA,
Respondent.

Petition For Writ of Certiorari To The Supreme Court Of The United States

PETITION FOR WRIT OF CERTIORARI

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Robert L. Booker, Utah State Bar No. 5667
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QUESTIONS PRESENTED FOR REVIEW

1) Is it constitutionally permissible for the Ninth Circuit to add an additional jurisdictional hurdle to require a Rule 41(e) Motion for Return of Property to demonstrate that the Government acted with a "callous disregard" for the Movant's constitutional rights, when other Circuits assert equitable jurisdiction based only upon a Fourth Amendment "reasonableness" standard?

2) Should the Supreme Court grant Certiorari to settle the conflict among the Circuits regarding the factors that must be considered in a district court's determination of whether to exercise Equitable Jurisdiction over a pre-indictment *Fed. R. Crim. P.,* Rule 41(e) Motion for return of property?

3) Even assuming that the "callous disregard" standard is adopted as the Law of the Land over the other Circuits' "reasonableness standard", should this Court exercise its supervisory powers where Petitioner has alleged that there was a callous disregard of his constitutional rights, where there is only a future speculative remedy at law, and Petitioner will suffer irreparable harm in violation of his First, Fourth and Fifth Amendment rights?

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PETITION FOR WRIT OF CERTIORARI

Petitioner, Neil R. Brown, respectfully prays that a Writ of Certiorari issue to review the Judgment and Order of the United States Ninth Circuit Court of Appeals filed November 17, 1999

OPINIONS BELOW

Petitioner, Neil R. Brown, filed pro se a pre-indictment Motion for Return of Property seized in a search by the Internal Revenue Service—Criminal Investigation Division. The motion was filed pursuant to Rule 41(e) of the *Federal Rules of Criminal Procedure,* in the United States District Court For The Eastern District of California. The District Court treated the motion as one that commenced a civil proceeding. Had it elected to assume jurisdiction over the motion, the District Court would have had jurisdiction under 28 *United States Code* § 1331.

By Order filed April 14, 1999, the District Court declined to assume equitable jurisdiction over the motion, finding that Petitioner had not demonstrated that 1) the government displayed a "callous disregard" for his constitutional rights, 2) there exists an "irreparable injury," and 3) that Petitioner had an adequate remedy at law. *Attachment A.* Petitioner appealed pro se. By Order filed November 17, 1999, the Ninth Circuit Court of Appeals affirmed the decision of the District Court. *Attachment B.*

JURISDICTION

Judgment of the Ninth Circuit Court of Appeals was entered on November 17, 1999. This Court's jurisdiction to consider this Petition for Writ of Certiorari from the final order and judgment of the Ninth Circuit Court of Appeals is invoked pursuant to 28 *United States Code* § 1254(1).

CONSTITUTIONAL PROVISIONS, STATUTES, AND REGULATIONS

THE CONSTITUTION OF THE UNITED STATES:

Amendment I
Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

Amendment IV
The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Amendment V
No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Federal Rules of Criminal Procedure, Rule 41(e) Motion for Return of Property. A person aggrieved by an unlawful search and seizure or by the deprivation of property may move the district court for the district in which the property was seized for the return of the property on the ground that

such person is entitled to lawful possession of the property. The court shall receive evidence on any issue of fact necessary to the decision of the motion. If the motion is granted, the property shall be returned to the movant, although reasonable conditions may be imposed to protect access and use of the property in subsequent proceedings. If a motion for return of property is made or comes on for hearing in the district of trial after an indictment or information is filed, it shall be treated also as a motion to suppress under Rule 12.

STATEMENT OF THE CASE

Petitioner, Neil R. Brown, is a principle of The Citizens Group, which is in the business of structuring the financial affairs of persons. The Citizens Group has offices in Red Bluff, California and in central Florida. The United States Government claims that the activities of the Citizens Group unlawfully aid and assist persons in the presentation of false tax returns for the purpose of "evading taxes." Despite the fact that the United States acknowledges that it has been investigating the Citizens Group for a number of years, no indictment or information has ever been issued for any of the activities of either Brown or the Citizens Group. To date, the matter has been before three (3) Grand Juries without resulting in an indictment, and no such indictment or information is anticipated against either party.

On June 10, 1998, three search warrants were executed at one location in Florida and three others in Southern California. *See, Attachment C, D,* and *E.* One of the properties searched was Petitioner's home located on Lynelle Lane, in Dairyville, California. *Attachment E.*

During the search of Petitioner's home, Petitioner was interrogated for approximately 4 1/2 hours while the agents loaded a rental truck and trailer with documents, boxes and file cabinets. The agents conducting the search bragged to Petitioner that "this will put [Petitioner] out of business" and demanded that Petitioner confess to the crime of tax evasion.

The agents unloaded the home of a truckload, and trailerload full of records, documents, and other papers, many of which were the personal property of Brown, his family members, and others completely unrelated to the Citizen's Group. After the search, Petitioner discovered that records and files were taken which pertained to corporations, trusts, plus other entities and activities not named in the warrant and wholly unrelated to the government's investigation, such as the Brown Family Trust files, birth certificates and other personal documents. A few files were later returned, however the overwhelming majority has been retained; therefore, the

Citizen's Group has not had sufficient documents and records to resume business operations.

On December 29, 1998 in the United States District Court, Eastern District of California, Petitioner filed a pro se pre-indictment Motion for Return of Property, pursuant to Rule 41(e) of the *Federal Rules of Criminal Procedure.* The motion was made on the grounds that Appellant was entitled to lawful possession, and that the property had been illegally seized.

On April 14, 1999, the District Court filed an order denying the motion by declining to assume equitable jurisdiction over Petitioner's motion. On pro se appeal to the Ninth Circuit Court of Appeals, the decision and order of the District Court were affirmed.

STATEMENT OF FACTS

According to the Government's own Affidavit In Support of Search Warrant, the Citizens Group has been engaged in the business of financial planning at least since early 1992. The Citizens Group has offered a variety of services including tax deferred income and employee leasing programs. During approximately 1997, a disgruntled former employee of The Citizens Group, whose identity has remained confidential, contacted the Internal Revenue Service (IRS) and wrongfully complained therein that the activities of The Citizen Group violated the United States tax code. Also during that same period, a second confidential informant allegedly contacted the IRS with a similar complaint.

In his *pro se* pleadings to the District Court, Petitioner alleged that at least part of the informant's motive was a direct, personal financial incentive in this matter. The confidential informants are engaged in the IRS Reward Program, which makes them eligible for a reward of 10% of any recovery of tax revenue which results from that persons assistance. Significantly, this incentive of financial gain was not disclosed to the magistrate who signed the Search Warrant. In fact, nothing was revealed about the informants' reliability except their lack of a prior criminal conviction.

Based largely upon information provided by the informants, the government applied to the United States District Court for the Eastern District of California to obtain a search warrant of the following premises:

1. Technical Service Division The Citizens Group, 605 B Main Street, Red Bluff, California ("the Main Street Office"). *Attachment C,*

2. Finance and Accounting Division The Citizens Group, 105 Sale Lane, Suite F, Red Bluff, California ("the Sale Lane Office") *Attachment D,* and

3. 23665 Lynelle Lane, Dairyville California ("the Residence"). *Attachment E,*

The application for each of the respective search warrants was supported by an Affidavit of Shawn Breslin dated May 22, 1998. No other affidavits were submitted in support of the warrants. On or about June 3, 1998, the Honorable Magistrate Judge John A. Moulds issued the three requested search warrants. On June 10, 1998, agents purported to execute the aforesaid search warrants.

Petitioner's *pro se* pleadings concluded that during the agents' search of the residence, Petitioner's personal vehicle plus three (3) other vehicles which were on the property at the time were subjected to warrantless searches. These searches were not supported by probable cause; and despite their presence on the property for several hours, none of the agents had even attempted to obtain a warrant. Petitioner also claimed that an office suite was searched without a warrant.

ARGUMENTS

It is respectfully submitted that this Court should grant *Certiorari* to review the Ninth Circuit Court of Appeals decision denying Petitioner's Rule 41(e) pre-indictment Motion for Return of Property for three reasons. First, the Ninth Circuit Court of Appeals has entered a decision in conflict with the decisions of other United States Courts of Appeal on the important federal question: what factors should be considered before a district court can reach the merits of a pre-indictment Rule 41(e) motion?.

Second, the question of which factors should be considered in a district court's decision to assert equitable jurisdiction involves important procedural and constitutional principles that have not previously been settled by this Court. Specifically, the Ninth Circuit has added an additional procedural hurdle to require a Rule 41(e) Motion for Return of Property to demonstrate a "callous disregard" for the Movant's constitutional rights, when other Circuits assert that Equitable Jurisdiction is based upon Fourth Amendment "reasonableness" standards. And third, the Ninth Circuit Court of Appeals has sanctioned a lower court's misapplication of federal law regarding these important principles, creating a conflict among the Circuits and depriving Petitioner of his rights under the First, Fourth, and Fifth Amendments, thus calling for an exercise of this Court's supervisory power.

I. THE SUPREME COURT SHOULD GRANT *CERTIORARI* TO SETTLE WHETHER A "CALLOUS DISREGARD" MUST BE DEMONSTRATED BECAUSE THE CIRCUITS ARE IN CONFLICT REGARDING THE FACTORS THAT MUST BE CONSIDERED IN A DISTRICT COURT'S DETERMINATION OF WHETHER TO EXERCISE EQUITABLE JURISDICTION OVER A PRE-INDICTMENT RULE 41(E) MOTION FOR RETURN OF PROPERTY.

The circuits that have considered this issue have generally agreed that pre-indictment Rule 41(e) Motions for Return of Property are guided by equitable principles, and thus involve an initial jurisdictional requirements that the Movant show 'irreparable injury' and an 'inadequate remedy at law'. *See, e.g., Floyd v. United States,* 860 F.2d 999, 1003 (10th Cir. 1988); *In re Harper,* 835 F.2d 1273, 1274 (8th Cir. 1988); *United States v. Martinson,* 809 F.2d 1364, 1367 (9th Cir. 1987); *Angel-Torres v. United States,* 712 F.2d 717, 719-20 (1st Cir. 1983); *Hunsucker v. Phinney,* 497 F.2d 29, 34 (5th Cir. 1974), *cert. denied,* 420 U.S. 927, 95 S.Ct. 1124, 43 L.Ed.2d 397 (1975); *Smith v. Katzenbach,* 351 F.2d 810, 814 (D.C. Cir. 1965). In deed, this Court noted that irreparable injury is required to support such motions entertained by the district court on equitable grounds. *G.M. Leasing Corp. v. United States,* 429 U.S. 338, 359-60, 97 S.Ct. 619, 632, 50 L.Ed.2d 530 (1977) (citing *Hunsucker,* 497 F.2d at 34).

It is significant that a few circuits have added still another requirement in the initial showing that the seizure involved a "callous disregard" for the Movant's constitutional rights. *See, e.g., Ramsden v. United States,* 2 F.3d 322, 325 (9th Cir. 1993) (holding that equitable jurisdiction was correctly exercised to reach the merits of a pre-indictment motion, and the suspect was entitled to return of illegally seized records); *Hunsucker,* 497 F.2d at 34 (5th Cir. 1974). Relying on *Ramsden,* the Ninth Circuit Court of Appeals purported to take this latter approach in deciding Petitioner's Rule 41(e) motion. *See, Attachment B, Memorandum Decision,* at 2-3 (9th Cir. Nov. 17 1999).

The latter approach, however, is not sound. It adds an additional, significant burden for the movant which must be overcome before even considering the merits of the Motion. For, as the Tenth Circuit Court of Appeals observed:

> a number of courts require the [movant] to show that the seizure involved a callous disregard for his constitutional rights. See, e.g., *Hunsucker,* 497 F.2d at 34. The equitable nature of Rule 41(e) jurisdiction is well established, and we have no difficulty reading equitable

> constraints into the text of the statute for that purpose. Rule 41(e) deals specifically, however, with the conduct that will trigger relief. **[Rule 41] requires a showing of an illegal seizure, not a callous disregard of that legality.** *It would be anomalous to impose as a jurisdictional hurdle a requirement more restrictive than the substantive harm specifically sought to be remedied by Rule 41(e).*
>
> *Floyd v. United States,* 860 F.2d 999 (10th Cir. 1988)(emphasis added).

In deed, Rule 41(e) of the *Federal Rules of Criminal Procedure* requires only an allegation that a search or seizure was unlawful, **it does not require that the Government's conduct exceeded unlawfulness to a particular degree of egregiousness, or that it rose to levels of "callousness."** To that end, Rule 41(e) states:

> A person aggrieved by an unlawful search and seizure **or by the deprivation of property** may move the district court . . . for the return of the property on the ground that such person is entitled to lawful possession of the property."
>
> *Fed.R.Crim.P.,* 41(e)(emphasis added).

Further, the advisory committee's notes on Rule 41(e) make it clear that Fourth Amendment reasonableness standards should be the guiding factor in any determination of whether a person has a right to the return of his property, pursuant to a pre-indictment Rule 41(e) motion. Specifically, the Committee stated, **"[R]easonableness under all the circumstances must be the test** when a person seeks to obtain the return of property." *Committee Note to 1989 Amendment,* at 30, 124 F.R.D. at 428.

In its Memorandum affirming the lower court's decision to dismiss Petitioner's Rule 41(e) Motion, the Ninth Circuit Court of Appeals did not address these Fourth Amendment

"reasonableness" standards. Instead, the Petitioner's motion was purportedly dismissed on the basis of *Ramsden's* "callous disregard" requirement, before even reaching the merits of Petitioner's Rule 41(e) Motion. It is both unrealistic and unreasonable to require a movant under Rule 41(e) to demonstrate a "callous disregard" as a part of the district court's determination of whether to assert its equitable jurisdiction.

The majority of the circuits do not require that this additional burden be met. In fact, the rule itself does not contain any requirement that a "callous disregard" be demonstrated by the moving party, and the Committee Notes reveal that this was not due to oversight. Furthermore, this additional requirement is especially troubling because this procedural hurdle dramatically alters the Movant's constitutional and procedural right to seek the return of his property, where the sister circuits do not impose this additional heavy burden.

II. THE QUESTION, 'WHAT FACTORS DETERMINE WHETHER A DISTRICT COURT SHOULD EXERCISE EQUITABLE JURISDICTION OVER A PRE-INDICTMENT RULE 41(E) MOTION FOR RETURN OF PROPERTY?' INVOLVES IMPORTANT CONSTITUTIONAL AND PROCEDURAL PRINCIPLES WHICH HAVE NOT BEEN SETTLED BY THIS COURT.

The question, 'what factors must be considered before a court can reach the merits of a pre-indictment Rule 41(e) motion for return of property?', has not yet been settled by this Court. However, this important question should be settled by this Court as there are important Constitutional, policy and procedural implications involved in this issue. Some circuits, in answering the question on their own, have engrafted into Rule 41(e), the requirement that the Movant show that the government displayed a "callous disregard" for that person's constitutional rights. Not only is such a requirement conspicuously absent from the rule and committee notes, it seems to create an unconstitutional impediment to the relief which Rule 41(e) was designed to provide.

First, the "callous disregard" requirement gives rise to dismissals of motions where the search or seizure otherwise violates the Fourth Amendment's 'reasonableness standard'. For, without any consideration of 'callous disregard',

> **If the United States has a need for the property in an investigation or prosecution, its retention of the property generally is reasonable. But, if the United States' legitimate interests can be satisfied even if the property is returned, continued retention of the property would become unreasonable.**
>
> *Committee Note to 1989 Amendment,* at 30, 124 F.R.D. at 428.

In the instant case, the Government has had approximately two full years to inspect, copy, or download seized records, including documents, digital and electronic information, computer hardware, and computer software. Also, if the Government has a legitimate interest in Petitioner's property for purposes of any investigation, that need could be satisfied even if the property is returned, by inspecting, copying, or downloading the documents and information in question. Continued retention of the property is therefore unreasonable and a violation of Due Process and an unconstitutional Taking of Property. Significantly, this remains true regardless of whether the Government displayed a 'callous disregard' for Petitioner's constitutional rights in conducting the search and seizure. The Rule's purpose is in addressing the movant's need for the disputed property; however the "callous disregard" standard improperly shifts the entire focus almost exclusively upon allegations of governmental misconduct.

Another reason that the 'callous disregard' jurisdictional threshold is unreasonable is that it deprives a class of persons that the legislature clearly intended to protect by Rule 41(e)'s enactment.

> A person aggrieved by an unlawful search and seizure ***or* by the deprivation of property** may move the

district court . . . for the return of the property on the ground that such person is entitled to lawful possession of the property."

Fed.R.Crim.P., 41(e)(emphasis added).

The plain language of the rule, as amended in 1989, makes it very clear that the legislature intended Rule 41(e) to protect persons aggrieved by the deprivation of property even in some circumstances where the search and seizure was legal. As explained by the Tenth Circuit:

> Under the former rule, the Movant had to allege an 'unlawful search and seizure'. Under the current form of the rule, however, the **Movant need only allege a 'deprivation of property' by the government.**
>
> *Kitty's East v. United States*, 905 F.2d 1367, 1371 (10th Cir. 1990) (citing **Committee Note to 1989 Amendment,** at 28, 124 F.R.D. 426).

In other words, Rule 41(e) is not limited to only those persons who's constitutional rights have been treated with 'callous disregard' by the government. The addition of a further procedural hurdle, before a district court's exercise of equitable jurisdiction, has significant Constitutional implications. As the examples below will demonstrate, in the instant case, Petitioner alleges not only 'deprivation of property' and 'unlawful search and seizure' by the Government, but also the Government's 'callous disregard of his constitutional rights'.

III. THE NINTH CIRCUIT COURT OF APPEALS SANCTIONED A LOWER COURT'S MISAPPLICATION OF LAW THAT DEPRIVED PETITIONER OF HIS RIGHTS, UNDER THE FIRST, FOURTH, AND FIFTH AMENDMENTS, SO AS TO CALL FOR AN EXERCISE OF THIS COURT'S SUPERVISORY POWERS.

Even if this Court agrees that *Ramsden* properly imposed the "callous disregard" standard as an additional factor in deciding motions for return of seized property, this Court should grant *Certiorari* to review the Ninth Circuit Court's denial of Petitioner's motion, because the Circuit Court so misapplied the *Ramsden* factors as to deprive Petitioner of his First, Fourth, and Fifth Amendment rights.

In this case, the appellate court affirmed the lower court's refusal to assume equitable jurisdiction over Petitioner's motion. According to the lower courts, 1) Petitioner did not show that the government displayed a callous disregard for Petitioner's constitutional rights, 2) Petitioner did not show that he would be irreparably injured without the return of property, and 3) Petitioner had an adequate remedy at law. Petitioner contends that all three of these findings are in error.

A. The Government Displayed a 'Callous Disregard' of Petitioner's Constitutional Rights in that Some Searches were Conducted without Warrants, Searches Pursuant to Warrants were Facially Overbroad; and the Good-Faith Exception Does Not Excuse the Agent's Conduct in violating Petitioner's constitutional Rights.

The Court of Appeals finding that the government did not display callous disregard to the rights of Petitioner is contradicted by the record. To begin with, the requirement that a warrant must describe with reasonable precision the place to be searched and the items to be seized, is strictly enforced where the warrant authorizes the seizure of books and similar items potentially protected by the First Amendment. *Stanford v. Texas*, 379 U.S. 476, 485, 85 S.Ct. 506, 511-12, 13 L.Ed.2d 431 (1965). In this Court's words:

> **[T]he constitutional requirement that warrants must particularly describe the 'things to be seized' is to be accorded the most scrupulous exactitude . . . when the basis for their seizure is the ideas which they contain.**
>
> *Id.*

In the instant case, the search warrant relied upon in connection with the search of Petitioner's home was insufficient on its face, whereas it did not list with particularity the items which were to be seized as the same related to any probable cause. In effect, the warrant permitted the seizure of literally any document or bit of information on the premises.

Next, the warrant was overbroad in that it did not limit the authority of the officers. More specifically, the warrant so extensively listed documents, records, notes, correspondence, and information so as to lead an executing officer to wonder if the warrant encompassed every conceivable paper bearing the targets' name. In deed, at one point during the search when confused officers asked the supervising officer, Shawn Breslin, exactly what property the warrant meant should be seized (from Brown's residence), Agent Breslin responded, **"anything with the name Brown on it".**

To pass constitutional muster, however, a warrant "must be specific enough to enable the person conducting the search reasonably to identify the things authorized to be seized". *United States v. Spilotro,* 800 F.2d 959, 963 (9th Cir.1986). Further, because the affidavit upon which the warrants were issued, was not attached to the warrant, the affidavit could not be relied upon or used to correct that deficit. *United States v. Hillyard,* 677 F.2d 1336, 1340 (9th Cir.1982).

As well, because no affidavit was provided with the warrant, Petitioner was deprived of an opportunity to monitor execution of the warrant, and the agents seizures were not tailored to limit the scope of their search. *United States v. Gantt,* U.S. No.98-50171, 99 Cal. Daily Op. Serv. 8363, 194 F.3d 987, 990 (9th Cir. 1999)(holding that the government violate[s] F.R.Cr.P. 41(d) by failing to present occupant with a complete copy of the warrant at the outset of the search of her home).

Moreover, review of the probable cause affidavit demonstrates that such affidavit was based almost entirely on an unreliable confidential informant who merely stated unreasonable legal conclusions about Petitioner's business activities. Additionally, the fact that volumes of documents were seized almost 2 years ago, and no indictment has since been returned (despite the expiration of three different grand jury

terms), nor is any indictment anticipated which would be consistent with the allegations in the Affidavit, suggest bad faith on the part of the government.

The *United States v. Leon*, good faith exception is inapplicable to Petitioner's Rule 41(e) Motion. 468 U.S. 897, 104 S.Ct. 3405, 82 L.Ed.2d 677 (1984). As the Tenth Circuit explained:

> Leon applies only to motions to suppress and their equivalents. Under Rule 41(e) [before it was amended], return of property was also a de facto suppression; hence reference to *Leon* was proper. Under the rule as it now exists, however, suppression and return of property are separate and distinct inquiries. (citations omitted). Consequently, *Leon* is no longer applicable to Rule 41(e) motions.
>
> *Kitty's East*, 905 F.2d at 5.

Accordingly, the good faith exception under *Leon* does not create a barrier to the Court's exercise of jurisdiction on a Rule 41(e) Motion, and some courts have held that Leon has no application at all. The District Court therefore should have exercised jurisdiction over Petitioner's Rule 41(e) Motion and considered the merits of Petitioner's request for the return of his property.

B. The Threat of Prosecution for his Allegedly Criminal Business Practices, Together with Seizure of Virtually All Business Records, as well as a Ruined Business Reputation, Constitutes 'Irreparable Injury' to the Petitioner So As to Invoke the Exercise of the Court's Equitable Jurisdiction.

In the instant case, Petitioner asserted a harm that was not addressed by the lower courts. Petitioner asserted that without his business records and other property he is unable to conduct his business and earn a living. The Government conceded that some hardship would be caused to Petitioner's business due to the Government seizure. *See, Attachment B.*

Petitioner's business included educational materials and business activities which he is no longer able to conduct.

Also significant is that Petitioner's business included teaching materials and activities which he is no loner able to conduct. He is not presently able to teach the concepts and theories because the Government stripped him of all such teaching materials that took years to accumulate. Some of these items cannot be replaced. By stopping, or at least impairing, his teaching activities, the Government is impending or denying Petitioner's First Amendment right to free speech. Such denial amounts to an unconstitutional prior restraint. *See, Elrod v. Burns*, 427 U.S. 347, 96 S.Ct. 2673, 49 L.Ed.2d 547 (1976). A prior restraint constitutes irreparable injury. *Id;* see also, *Kitty's East*, 905 F.2d at 1371-1372. And, as the Tenth Circuit Court of Appeals explained in *Kitty's East:*

> It is axiomatic that the timing of speech is often crucial to its impact and that prior restraints are presumptively unconstitutional. The promise of review of a prior restraint at some indefinite, future time does not meet constitutional requirements. [A]fter a seizure pursuant to proper warrant, prompt judicial determination . . . . [is] necessary to preserve First Amendment rights.
>
> *Id.*, 905 F.2d at 1372.

The *Kitty's East* Court held that because a prior restraint must be reviewed on the motion of the party restrained at the earliest point "compatible with sound judicial resolution," equitable jurisdiction was proper. Id. at 1372 (quoting *Freedman*, 380 U.S. at 59, 85 S.Ct. at 739. In sum, the special protections of the First Amendment demanded the exercise of equitable jurisdiction in the present case.

C. Petitioner does not have an 'Adequate Remedy at Law' because an 'Ongoing Criminal Investigation' Does Not Provide an Opportunity to Challenge the Unconstitutional Seizure.

The Ninth Circuit Court of Appeals asserts that since

there is an ongoing investigation, Mr. Brown will (at some indefinite point in the future) have an opportunity to challenge the seizure of the documents within the context of a criminal proceeding. This assertion however, assumes that Mr. Brown will be indicted, an assumption which presently does not appear to be true. Also, this speculative future remedy is severely inadequate because as matters stand today, Petitioner has not had any remedy in law during the past two years; and he has no such remedy today. *See, Kitty's East,* 905 F.2d at 1372.

Petitioner continues to be harmed by the seizure of all business related documents and information. Petitioner's company cannot remit payments, return client funds nor even provide any accurate accounting of customer accounts without such information. By the time Petitioner is brought before a Jury in a criminal trial to be proven innocent, or in case the Government is unable to obtain evidence of criminal activity, Petitioner's business will have been completely destroyed all without due process and without just compensation for his property and good name. The lower court's promise of a future, yet uncertain remedy is not an adequate remedy at all.

CONCLUSION

This Court should review this decision and determine whether persons in the position of Mr. Brown lose their right to recover their personal property and ability to earn a living where the government seizes vast amounts of information and materials in an attempt to create a criminal case.

RESPECTFULLY SUBMITTED, this 14th day of February, 2000.

BOOKER & ASSOCIATES

H. Ralph Klemm
Robert L. Booker
Barbara A. Barton

Attorneys for Petitioner, Brown

LIST OF ATTACHMENTS

Order filed April 14, 1999	Attachment A
Order filed November 17, 1999	Attachment B
Search Warrant (Main Street)	Attachment C
Search Warrant (Sale Lane)	Attachment D
Search Warrant (Residence)	Attachment E

ATTACHMENT A

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
——oo0oo——

NEIL R. BROWN,

NO. CIV. S-99-0052 WBS/PAN

Petitioner,

v. ORDER

UNITED STATES OF AMERICA,
Respondent.

——oo0oo——

On December 29, 1998, Brown filed a motion to return all property seized pursuant to Fed. R. Crim. P. 41(e), as the result of a search warrant dated June 3, 1998. (SW-98-057 JFM). Because the motion was made before Brown has been charged in a criminal case, the court treated it as one commencing a civil proceeding. (*See* Order filed January 11, 1999).

On March 25, 1999, the government responded to that motion, arguing, among other things, that the court should decline to assume jurisdiction over the matter. Brown has replied to the government's response. For the reasons discussed below, the court denies to assume jurisdiction, and therefore dismissed Brown's motion.

Ordinarily, Rule 41(e) is used to seek the return of seized property after an indictment has been returned. *Ramsden v. United States,* 2 F. 3d 322, 324 (9th Cir. 1993). While the court has the power to entertain such a motion when no criminal proceedings are pending against the movant, it must exercise "caution and restraint" before assuming jurisdiction in such circumstances. *Id.* In deciding whether to assume jurisdiction, the court considers four factors: (1) whether the Government has displayed callous disregard for the constitutional rights of the movant; (2) whether the movant has an individual interest in and need for the property he wants returned; (3) whether the movant would be irreparably injured by denying the return of property; and (4) whether the movant has an adequate remedy at law for the redress of his grievance. *Id.* at 325.

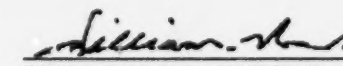
The court has reviewed these factors, and concludes that they militate against assuming jurisdiction. The first factor weighs heavily against assuming jurisdiction because it does not appear that the government has displayed callous disregard for the rights of the movant. To the contrary, in obtaining the property sought to be returned it acted pursuant to a search warrant issued by this court. The second factor weighs in favor of movant, but not decidedly so. Brown may have an "individual" interest in the property sought to be returned, but he has not established a need for that property. No evidence has been presented to establish that Brown would be irreparably harmed by the failure to return the property in satisfaction of the third factor. Finally, Brown is not without an adequate remedy at law because this is not an instance where the government "has no plan to prosecute" the movant, and thus movant will have no opportunity to renew the Rule 41(e) motion within the criminal case itself. *See Ramsden*, 2 F. 3d at 326. The government prosecutor in this case represents that the investigation of Brown and others associated with him is continuing and is active, and the grand jury is continuing to receive evidence.

Beyond these factors, an additional consideration weighs in the court's decision not to exercise its equitable jurisdiction under Rule 41(e). It appears that Brown has recently served a set of interrogatories upon the IRS criminal investigator assigned to Brown's investigation. (*See* Government's Supplemental Status Report filed April 8, 1999). The court has reviewed those interrogatories, and concludes that a substantial and immediate risk exists that the exercise of equitable jurisdiction may interfere with an ongoing criminal investigation.

For the foregoing reasons, the court declines to exercise its equitable jurisdiction over Brown's pre-indictment Rule 41(e) motion.

IT IS THEREFORE ORDERED that Brown's Rule 41(e) motion be, and the same hereby is, DENIED.

DATED: April 13, 1999



WILLIAM B. SHUBB
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
FOR THE
EASTERN DISTRICT OF CALIFORNIA

OFFICE OF THE CLERK
501 "I" STREET
SACRAMENTO, CA 95814

Neil R. Brown

v. **CIV S-99-052 WBS PAN PS**

USA

You are hereby notified that a Notice of Appeal was filed on 4/21/99 in the above entitled civil case. Enclosed is a copy of the Notice of Appeal, pursuant to FRAP 3(d).

May 7, 1999

JACK L. WAGNER, CLERK

By: _____
L. Reader, Deputy Clerk

CC: COURT REPORTERS (only if hearings)
COURT OF APPEALS (w/copy of appeal, appealed document, 2 copies of appeal information sheet and docket sheet)

ALL COUNSEL (w/copy of appeal and docket sheet)

APPEAL NOTICE - CIVIL

ATTACHMENT B

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

NEIL R. BROWN,
Plaintiff-Appellant,
v.
UNITED STATES OF AMERICA,
Defendant-Appellee.

No. 99-15917
D.C. No. CV-99-00052-WBS
MEMORANDUM[1]

Appeal from the United States District Court
for the Eastern District of California
William B. Shubb, Chief Judge, Presiding

Submitted November 15, 1999[2]

Before: WALLACE, FARRIS, and T.G. NELSON, Circuit Judges.

Neil R. Brown appeals pro se the district court's dismissal of his pre-indictment Fed. R. Crim. P. 41(e) action seeking return of property seized while he was under investigation for tax evasion. We have jurisdiction under 28 U.S.C. § 1291. We review de novo the district court's interpretation of Rule 41(e) and for abuse of discretion its decision not to exercise its equitable jurisdiction under that rule. *See Ramsden v. United States*, 2 F. 3d 322, 324 (9th Cir. 1993). We affirm.

Brown contends the district court misapplied the factors enumerated in *Ramsden* in declining to exercise equitable jurisdiction. First, Brown contends the district court erred by concluding the government did not display callous disregard

---

[1] This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as may be provided by 9th Cir. R. 36-3.

[2] The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

for his *constitutional rights*. This contention lacks merit because the searches conducted were authorized by valid warrants and executed according to these same warrants.

Second, Brown contends that without the seized documents he cannot run his business, which in turn makes it impossible for him to support his family. Although this may establish an individual interest in the property, it does not follow that Brown will suffer *irreparable injury* if the property is not returned. *See id.* at 325.

Next, we agree with the district court that Brown is not without an *adequate remedy at law*. Unlike *Ramsden*, a criminal investigation into Brown's business is ongoing and therefore he will have an opportunity to challenge the seizure of the documents and request their return at a later date. *Cf. id.* at 326.

Finally, we agree with the district court that the government had a legitimate reason for retaining Brown's property in connection with an ongoing federal criminal investigation. Given the *government's assertion of an ongoing federal investigation*, we find no abuse of discretion in the district court's decision. *See id.*

AFFIRMED.

ATTACHMENT C

United States District Court
EASTERN DISTRICT OF CALIFORNIA

In the Matter of the Search of
(Name, address or brief description of person or property to be search)

SEARCH WARRANT

The Citizens Group
Technical Services Division
605 B Main Street
Red Bluff, CA 96080

CASE NUMBER:
SW-98 055 JFM

TO: IRS Special Agent Shawn Breslin and any Authorized Officer of the United States

Affidavit(s) having been made before me by Shawn Breslin who has reason to believe that ( ) on the person of or (X) on the premises known as (name, description and/or location)

The Citizens Group Technical Services Division
605 B Main Street, Red Bluff, California, as more fully described in Attachment A hereto;

in the Eastern District of California there is now concealed a certain person or property, namely (describe the person or property to be seized)

the documents and items described in Attachment B hereto, which is incorporated herein, which documents and items are evidence of, and instrumentalities of violations of Title 26, sections 7201 and 7206(2), and Title 18, section 371.

I am satisfied that the affidavit(s) and any recorded testimony establish probable cause to believe that the person or property so described is now concealed on the person or premises above-described and establish grounds for the issuance of this warrant.

YOU ARE HEREBY COMMANDED to search on or before

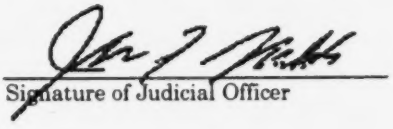
June 13, 1998
DATE

(not to exceed 10 days) the person or place named above for the person or property specified, serving this warrant and making the search (in the daytime - 6:00 A.M. to 10:00 P.M.) and if the person or property be found there to seize same, leaving a copy of this warrant and receipt for the person or property taken, and prepare a written inventory of the person or property seized and promptly return this warrant to John F. Moulds, U.S. Magistrate Judge as required by law.
U.S. Judge or Magistrate

June 3, 1998 12:09 p.m. at Sacramento, California
Date and Time Issued City and State

John F. Moulds

United States Magistrate Judge
Name and Title of Judicial Officer


Signature of Judicial Officer

AUSA Benjamin B. Wagner

RETURN

Date Warrant Received	Date and Time Warrant Executed	Copy of Warrant and Receipt for Items Left With
Inventory Made in the Presence of		
Inventory of Person or Property Taken Pursuant to the Warrant		

CERTIFICATION

I swear that this inventory is a true and detailed account of the person or property taken by me on the warrant.

_____

Subscribed, sworn to, and returned before me this date.

_____ _____

U.S. Judge or Magistrate Date

BEST AVAILABLE COPY

ATTACHMENT A

Description of Place to be Searched

Technical Services Division, 605 B Main St., Red Bluff, California

The business office of NEIL BROWN, commonly known as THE CITIZENS GROUP, LLC, **Technical Services Division**, located at 605 B Main Street, Red Bluff, California, and any outbuildings or sheds contained within the curtilage of that office building.

The business office located at 605 B Main Street, Red Bluff, California, is located on the second floor of a two story building. The building is situated at the northwest corner of the intersection of Antelope Blvd. and Main St. in downtown Red Bluff. The Building has light Blue/Gray sides with a dark Blue/Gray trim. CITIZENS is printed clearly in large gold leaf lettering on the windows of the office.

The entrance way to 605 B is located on the east side of the building facing Main Street. the entrance door is actually the entrance to a stairwell leading to the second story. THE CITIZENS GROUP, LLC, is the only office on the second floor. Above the entrance door is a security camera. The security camera is monitored upstairs by one of the employees of THE CITIZENS GROUP, LLC. The Stairwell is situated between the entrances of two other businesses. Century 21 Real Estate is on the south or left side of the stairwell and the Kountry Kitchen cafe is located to the north or right side of the stairwell.

ATTACHMENT B

Description of Property to be Seized from The Citizens Group, Technical Services Division, 605 B Main Street, Red Bluff, California:

Definitions:

The "Entities" means: —THE CITIZENS GROUP, LLC;
—CITIZENS FINANCE COMPANY, of Ireland;
—CITIZENS, a Nevada Corporation;
—THE CITIZENS GROUP, a Wyoming Corporation;
—CITIZENS WORLDWIDE LEASING COMPANY;
—CORPORATE MANAGEMENT COMPANY, LTD.;
—USA PERSONNEL LEASING COMPANY;
—CITIZENS CONSULTANTS, INTERNATIONAL; and
—THE LEGAL ADVANTAGE;

The "Individuals" means: —NEIL R. BROWN;
—WILLIAM BRADHAM;
—NANCY ARMSTRONG;
—ANTHONY WYATT;
—DAVID H. TEDDER; and
—MICHAEL TAYLOR.

The "Clients" means: All U.S. residents who, during the time period below, are or were clients of, or had a contract with, any of the Entities.

Time Period: the property sought herein consists of documents and things created between January 1, 1992 to the present.

Property to be seized:

a. The following documents and things, which relate to each of the Entities:

(i) Originals and copies of Articles of Incorporation, corporate resolutions, minutes books, stock books, state charter, and record of corporate franchise taxes paid;

(ii) Originals and copies of accounting records, including work papers, ledgers, journals, tax returns, and notes.

(iii) Financial and banking records for the Entities, including financial statements, bank account statements, balance sheets, account holder or wire transfer instructions, correspondence with financial institutions, and documents recording payments to and from such Entities, including checks, cashiers checks, check registers, wire transfers, and promissory notes.

b. The following documents and things, which relate to each of the Clients:

(i) Client lists, Client portfolios, and Client files, including copies of tax returns, financial information, and financial questionnaires.

(ii) Contracts, including loan agreements, employee leasing agreements, escrow agreements, consulting agreements, financial management agreements, and similar contracts entered into by or on behalf of the Clients, or businesses controlled by the Clients.

(iii) Financial and banking records for the Clients, including financial statements, bank account statements, balance sheets, account holder or wire transfer instructions, and documents recording payments to and from such Clients, including checks, cashiers checks, check registers, wire transfers, and promissory notes.

(iv) Correspondence between any Client and any Individual or other employee of an Entity.

c. Records of payments by any of the Entities or Individuals for commissions and fees to salesmen and others paid in connection with services rendered for (1) banking or financial services, both foreign and domestic, (2) the formulation and/or maintenance of trusts, corporations, partnerships, contracts, and agreements, (3) the referral of clients, and (4) directors fees.

d. A sample of each of the forms, paper, portfolios, and other supplies used to prepare Client financial profiles or to compile Client information, or to prepare trust and partnership agreements, contracts, agreements, and indentures.

e. Any and all copies of Internal Revenue Service publi-

cations and documents, including all correspondence, manuals, and notices from the IRS.

f. Any federal and state income tax returns for the Entities, Individuals and Clients.

g. Originals and copies of video tapes, audio tapes, and transcripts of client meetings, seminars, and staff meetings.

h. Video tapes, audio tapes, transcripts, pamphlets, brochures, periodicals, newsletters, and correspondence used to market or otherwise promote and sell the services of the Entities.

i. The following items maintained by each of the Individuals: Address books, phone books, personal calendars, daily planners, journals, itineraries, rolodex indices, and contact lists.

j. Address books, phone books, personal calendars, rolodex indices, telephone toll records, facsimile cover sheets, and other documents reflecting communications among the Entities, Individuals and Clients.

k. Currency, cashier's checks, money orders, and wire transfers in excess of $1,000 in which the payee is any of the Entities, Individuals or Clients.

l. Any safes and safe deposit box keys.

m. Bank records relating to accounts at, or transactions involving, the following financial institutions:

1. Bank of Ireland
2. Ansbacher Ltd. Bank-Jersey (St. Helier)
3. Bank of Dublin
4. U.S. Bank of Nevada, Reno
5. CoreStates Bank, Wilmington, Delaware
6. 1st Union Bank, St. Petersburg, Florida
7. Community 1st Bank, Cheyenne, Wyoming

n. Documents, including the passports for any of the Individuals, and airline tickets, correspondence, itineraries, reservation forms, and receipts, showing travel by the Individuals or Clients to Florida, California, Nevada, Wyoming, Ireland, the United Kingdom, Switzerland, the Channel Islands, Luxembourg, the Bahamas, the Cayman Islands, Belize, Turks and Caicos, Netherlands Antilles, and Mexico.

o. Any and all of the above described information that

may be stored on magnetic media, including computer hard drives, diskettes, tapes, or any other media capable of storing information in a form accessible through the use of a computer or word processor.

The agents searching for such information are authorized to search any desktop, other "personal computer", laptop or pc located on the premises to be searched and to copy all above described information stored on such computers. The computer Investigative Specialist, when searching for evidence authorized under the warrant, will take reasonable steps to avoid searching for and viewing documents which are not authorized under the warrant. These steps include the identification of non-pertinent directories and files. The Computer Specialist will not disclose the content of any file not covered under the warrant of the investigators.

In the event that the agents cannot, due to the volume of evidence or for technical reasons, obtain access to any subject computer or cannot search for or copy information contained on that computer, the agents are then authorized to seize such computer and remove it to a laboratory setting for a sufficient, reasonable period of time to obtain access to, search for, and recover the files and financial records described above. In addition, if the files and records described above cannot be read and understood without the software or programs that created those files or records, the agents are authorized to seize such software, including encryption software, and any documentation and manuals that describe such software and give instruction on its installation and use.

The agents searching for such information are also authorized to answer all incoming calls to the business occurring during the execution of the search. Incoming phone calls will be answered to determine the caller's identity and whether the caller is a Client, Individual, or associated with an Entity.

ATTACHMENT D

United States District Court
EASTERN DISTRICT OF CALIFORNIA

In the Matter of the Search of
(Name, address or brief description of person or property to be search)

SEARCH WARRANT

The Citizens Group
Finance and Accounting Division
105 Sale Lane, Suite F
Red Bluff, CA 96080

CASE NUMBER:
SW-98 056 JFM

TO: IRS Special Agent Shawn Breslin and any Authorized Officer of the United States

Affidavit(s) having been made before me by Shawn Breslin who has reason to believe that ( ) on the person of or (X) on the premises known as (name, description and/or location)

The Citizens Group Finance and Accounting Division
105 Sale Lane, Suite F, Red Bluff, California, as more fully described in Attachment A hereto;

in the Eastern District of California there is now concealed a certain person or property, namely (describe the person or property to be seized)

the documents and items described in Attachment B hereto, which is incorporated herein, which documents and items are evidence of, and instrumentalities of violations of Title 26, sections 7201 and 7206(2), and Title 18, section 371.

I am satisfied that the affidavit(s) and any recorded testimony establish probable cause to believe that the person or property so described is now concealed on the person or premises above-described and establish grounds for the issuance of this warrant.

YOU ARE HEREBY COMMANDED to search on or before

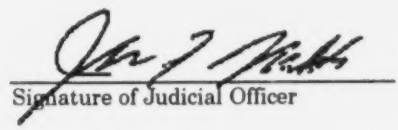
June 13, 1998
DATE

(not to exceed 10 days) the person or place named above for the person or property specified, serving this warrant and making the search (in the daytime - 6:00 A.M. to 10:00 P.M.) and if the person or property be found there to seize same, leaving a copy of this warrant and receipt for the person or property taken, and prepare a written inventory of the person or property seized and promptly return this warrant to John F. Moulds, U.S. Magistrate Judge as required by law.
U.S. Judge or Magistrate

June 3, 1998 11:51 p.m. at Sacramento, California
Date and Time Issued City and State

John F. Moulds

United States Magistrate Judge
Name and Title of Judicial Officer


Signature of Judicial Officer

AUSA Benjamin B. Wagner

RETURN

Date Warrant Received	Date and Time Warrant Executed	Copy of Warrant and Receipt for Items Left With
Inventory Made in the Presence of		
Inventory of Items or Property Taken Pursuant to the Warrant		

CERTIFICATION

I swear that this inventory is a true and detailed account of the person or property taken by me on the warrant.

_____

Subscribed, sworn to, and returned before me this date.

_____ _____

U.S. Judge or Magistrate Date

BEST AVAILABLE COPY

ATTACHMENT A

Description of Place to be Searched

Finance and Accounting Division, 105 Sale Lane, Suite F, Red Bluff, California

The business office of NEIL R. BROWN, commonly known as THE CITIZENS GROUP, LLC, **Finance and Accounting Division**, located at 105 Sale Lane, Suite F, Red Bluff, California, and any outbuildings or sheds contained within the curtilage of that office building.

The business office located at 105 Sale Lane, Suite F, is on the second story of a two story building. Entrance to Suite F is gained by using an outside staircase located on the West side of the building. The building is light blue in color with white trim. The office door is located in the middle of the second story, between the entrances to suites E and G. The letter F is clearly present on the top section of the door. The street number 105 is in large white block letters on the front corner of the building facing Sale Lane.

ATTACHMENT B

Description of Property to be Seized from The Citizens Group, Finance and Accounting Division, 105 Sale Lane, Suite F, Red Bluff, California:

Definitions:

The "Entities" means: —THE CITIZENS GROUP, LLC;
—CITIZENS FINANCE COMPANY, of Ireland;
—CITIZENS, a Nevada Corporation;
—THE CITIZENS GROUP, a Wyoming Corporation;
—CITIZENS WORLDWIDE LEASING COMPANY;
—CORPORATE MANAGEMENT COMPANY, LTD.;
—USA PERSONNEL LEASING COMPANY;
—CITIZENS CONSULTANTS, INTERNATIONAL; and
—THE LEGAL ADVANTAGE;

The "Individuals" means: —NEIL R. BROWN;
—WILLIAM BRADHAM;
—NANCY ARMSTRONG;
—ANTHONY WYATT;
—DAVID H. TEDDER; and
—MICHAEL TAYLOR.

The "Clients" means: All U.S. residents who, during the time period below, are or were clients of, or had a contract with, any of the Entities.

Time Period: the property sought herein consists of documents and things created between January 1, 1992 to the present.

Property to be seized:

a. The following documents and things, which relate to each of the Entities:

(i) Originals and copies of Articles of Incorporation, corporate resolutions, minutes books, stock books, state charter, and record of corporate franchise taxes paid;

(ii) Originals and copies of accounting records, including work papers, ledgers, journals, tax returns, and notes.

(iii) Financial and banking records for the Entities, including financial statements, bank account statements, balance sheets, account holder or wire transfer instructions, correspondence with financial institutions, and documents recording payments to and from such Entities, including checks, cashiers checks, check registers, wire transfers, and promissory notes.

b. The following documents and things, which relate to each of the Clients:

(i) Client lists, Client portfolios, and Client files, including copies of tax returns, financial information, and financial questionnaires.

(ii) Contracts, including loan agreements, employee leasing agreements, escrow agreements, consulting agreements, financial management agreements, and similar contracts entered into by or on behalf of the Clients, or businesses controlled by the Clients.

(iii) Financial and banking records for the Clients, including financial statements, bank account statements, balance sheets, account holder or wire transfer instructions, and documents recording payments to and from such Clients, including checks, cashiers checks, check registers, wire transfers, and promissory notes.

(iv) Client account statements.

(v) Documents constituting, listing, or describing nonresident foreign corporations, foreign trusts, foreign partnerships, or other foreign entities created on behalf of the Clients, including articles of incorporation, certificates or licenses of incorporation, bylaws, corporate resolutions, trust agreements, lists of foreign directors, officers, managers or trustees, and abstracts or memoranda.

(vi) Financial and banking records for the nonresident foreign corporations, foreign trusts, foreign partnerships, or other foreign entities created on behalf of the Clients, including financial statements, bank account statements, balance sheets, account holder or wire transfer instructions, and documents recording payments to and from such nonresident

foreign corporations, foreign trusts, or other foreign entities, including checks, cashiers checks, check registers, wire transfers, and promissory notes.

(vii) Documents relating to Client investment in foreign assets, including European bonds, notes, bank obligations, and other securities, pooled asset funds, and letters of credit, including offering circulars, investment memoranda, commitment agreements, and financial instruments created by European financial institutions.

(viii) Correspondence between any Client and and Individual or other employee of an Entity.

c. Records of payments by any of the Entities or Individuals for commissions and fees to salesmen and others paid in connection with services rendered for (1) banking or financial services, both foreign and domestic, (2) the formulation and/or maintenance of trusts, corporations, partnerships, contracts, and agreements, (3) the referral of clients, and (4) directors fees.

d. A sample of each of the forms, paper, portfolios, and other supplies used to prepare Client financial profiles or to compile Client information, or to prepare trust and partnership agreements, contracts, agreements, and indentures.

e. Any and all copies of Internal Revenue Service publications and documents, including all correspondence, manuals, and notices from the IRS.

f. Any federal and state income tax returns for the Entities, Individuals and Clients.

g. The following items maintained by each of the Individuals: Address books, phone books, personal calendars, daily planners, journals, itineraries, rolodex indices, and contact lists.

h. Address books, phone books, personal calendars, rolodex indices, telephone toll records, facsimile cover sheets, and other documents reflecting communications among the Entities, Individuals and Clients.

i. Currency, cashier's checks, money orders, and wire transfers in excess of $1,000 in which the payee is any of the Entities, Individuals or Clients.

j. Any safes and safe deposit box keys.

k. Bank records relating to accounts at, or transactions involving, the following financial institutions:

1. Bank of Ireland
2. Ansbacher Ltd. Bank-Jersey (St. Helier)
3. Bank of Dublin
4. U.S. Bank of Nevada, Reno
5. CoreStates Bank, Wilmington, Delaware
6. 1st Union Bank, St. Petersburg, Florida
7. Community 1st Bank, Cheyenne, Wyoming

l. Documents, including the passports for any of the Individuals, and airline tickets, correspondence, itineraries, reservation forms, and receipts, showing travel by the Individuals or Clients to Florida, California, Nevada, Wyoming, Ireland, the United Kingdom, Switzerland, the Channel Islands, Luxembourg, the Bahamas, the Cayman Islands, Belize, Turks and Caicos, Netherlands Antilles, and Mexico.

m. Any and all of the above described information that may be stored on magnetic media, including computer hard drives, diskettes, tapes, or any other media capable of storing information in a form accessible through the use of a computer or word processor.

The agents searching for such information are authorized to search any desktop, other "personal computer", laptop or pc located on the premises to be searched and to copy all above described information stored on such computers. The computer Investigative Specialist, when searching for evidence authorized under the warrant, will take reasonable steps to avoid searching for and viewing documents which are not authorized under the warrant. These steps include the identification of non-pertinent directories and files. The Computer Specialist will not disclose the content of any file not covered under the warrant of the investigators.

In the event that the agents cannot, due to the volume of evidence or for technical reasons, obtain access to any subject computer or cannot search for or copy information contained on that computer, the agents are then authorized to seize such computer and remove it to a laboratory setting for a sufficient, reasonable period of time to obtain access to, search for, and recover the files and financial records described

above. In addition, if the files and records described above cannot be read and understood without the software or programs that created those files or records, the agents are authorized to seize such software, including encryption software, and any documentation and manuals that describe such software and give instruction on its installation and use.

ATTACHMENT E

United States District Court
EASTERN DISTRICT OF CALIFORNIA

In the Matter of the Search of
(Name, address or brief description of person or property to be search)

SEARCH WARRANT

23665 Lynelle Lane
Dairyville, CA

CASE NUMBER:

SW-98 057 JFM

TO: IRS Special Agent Shawn Breslin and any Authorized Officer of the United States

Affidavit(s) having been made before me by Shawn Breslin who has reason to believe that ( ) on the person of or (X) on the premises known as (name, description and/or location)

23665 Lynelle Lane
Dairyville, California, as more fully described in Attachment A hereto;

in the Eastern District of California there is now concealed a certain person or property, namely (describe the person or property to be seized)

the documents and items described in Attachment B hereto, which is incorporated herein, which documents and items are evidence of, and instrumentalities of violations of Title 26, sections 7201 and 7206(2), and Title 18, section 371.

I am satisfied that the affidavit(s) and any recorded testimony establish probable cause to believe that the person or property so described is now concealed on the person or premises above-described and establish grounds for the issuance of this warrant.

YOU ARE HEREBY COMMANDED to search on or before

June 13, 1998
DATE

(not to exceed 10 days) the person or place named above for the person or property specified, serving this warrant and making the search (in the daytime - 6:00 A.M. to 10:00 P.M.) and if the person or property be found there to seize same, leaving a copy of this warrant and receipt for the person or property taken, and prepare a written inventory of the person or property seized and promptly return this warrant to John F. Moulds, U.S. Magistrate Judge as required by law.
U.S. Judge or Magistrate

June 3, 1998 11:37 p.m. at Sacramento, California
Date and Time Issued City and State

John F. Moulds

United States Magistrate Judge
Name and Title of Judicial Officer

Signature of Judicial Officer

AUSA Benjamin B. Wagner

RETURN

[illegible]	Date and Time Warrant Executed	Copy of Warrant and Receipt for Items Left With
Inventory Made in the Presence of		
Inventory of Items or Property Taken Pursuant to the Warrant		

CERTIFICATION

I swear that this inventory is a true and detailed account of the person or property taken by me on the warrant.

_____

Subscribed, sworn to, and returned before me this date.

_____ _____

U.S. Judge or Magistrate Date

BEST AVAILABLE COPY

ATTACHMENT A

Description of Place to be Searched

Residence of Neil R. Brown, 23665 Lynelle Lane, Dairyville, California

The residence and private office of Neil R. Brown, located at 23665 Lynelle Lane, Dairyville, California, and any outbuildings or sheds contained within the curtilage or property of that residence. Lynelle Lane can be reached by traveling south and east on Highway 99 from the town of Red Bluff, to Patterson Lane. Turn right on Patterson, heading west then turn left on Muller Lane heading south. Travel down Muller Lane to Lynelle Lane. Turn right on Lynelle Lane heading west. The residence is located on the south side of Lynelle Lane.

The residence is light blue/gray in color with dark blue/gray trim and a brown composite roof. At the front corner of the driveway to the residence is a post with the numbers 23665 clearly attached to the post. From the road, several sheds or outbuilding can be seen at the back end of the property. These buildings all appear to have sky lights attached to their roofs. There is a similar shed directly behind the residence that is being used as an office by Brown.

ATTACHMENT B

Description of Property to be Seized from the premises at 23665 Lynelle Lane, Dairyville, California, including outbuildings, vehicles and structures on the property:

Definitions:

The "Entities" means: —THE CITIZENS GROUP, LLC;
—CITIZENS FINANCE COMPANY, of Ireland;
—CITIZENS, a Nevada Corporation;
—THE CITIZENS GROUP, a Wyoming Corporation;
—CITIZENS WORLDWIDE LEASING COMPANY;
—CORPORATE MANAGEMENT COMPANY, LTD.;
—USA PERSONNEL LEASING COMPANY;
—CITIZENS CONSULTANTS, INTERNATIONAL; and
—THE LEGAL ADVANTAGE;

The "Individuals" means: —NEIL R. BROWN;
—WILLIAM BRADHAM;
—NANCY ARMSTRONG;
—ANTHONY WYATT;
—DAVID H. TEDDER; and
—MICHAEL TAYLOR.

The "Clients" means: All U.S. residents who, during the time period below, are or were clients of, or had a contract with, any of the Entities.

Time Period: the property sought herein consists of documents and things created between January 1, 1992 to the present.

Property to be seized:

a. The following documents and things, which relate to each of the Entities:

(i) Originals and copies of Articles of Incorporation, corporate resolutions, minutes books, stock books, state charter, and record of corporate franchise taxes paid;

(ii) Originals and copies of accounting records, including work papers, ledgers, journals, tax returns, and notes.

(iii) Financial and banking records for the Entities, including financial statements, bank account statements, balance sheets, account holder or wire transfer instructions, correspondence with financial institutions, and documents recording payments to and from such Entities, including checks, cashiers checks, check registers, wire transfers, and promissory notes.

b. The following documents and things, which relate to each of the Clients:

(i) Client lists, Client portfolios, and Client files, including copies of tax returns, financial information, and financial questionnaires.

(ii) Contracts, including loan agreements, employee leasing agreements, escrow agreements, consulting agreements, financial management agreements, and similar contracts entered into by or on behalf of the Clients, or businesses controlled by the Clients.

(iii) Financial and banking records for the Clients, including financial statements, bank account statements, balance sheets, account holder or wire transfer instructions, and documents recording payments to and from such Clients, including checks, cashiers checks, check registers, wire transfers, and promissory notes.

(iv) Client account statements.

(v) Documents constituting, listing, or describing nonresident foreign corporations, foreign trusts, foreign partnerships, or other foreign entities created on behalf of the Clients, including articles of incorporation, certificates or licenses of incorporation, bylaws, corporate resolutions, trust agreements, lists of foreign directors, officers, managers or trustees, and abstracts or memoranda.

(vi) Financial and banking records for the nonresident foreign corporations, foreign trusts, foreign partnerships, or other foreign entities created on behalf of the Clients, including financial statements, bank account statements, balance sheets, account holder or wire transfer instructions, and documents recording payments to and from such nonresident foreign corporations, foreign trusts, or other foreign entities,

including checks, cashiers checks, check registers, wire transfers, and promissory notes.

(vii) Documents relating to Client investment in foreign assets, including European bonds, notes, bank obligations, and other securities, pooled asset funds, and letters of credit, including offering circulars, investment memoranda, commitment agreements, and financial instruments created by European financial institutions.

(viii) Correspondence between any Client and and Individual or other employee of an Entity.

c. The following documents and things, which relate to NEIL BROWN:

(i) Financial and banking records for NEIL BROWN, including financial statements, bank account statements, balance sheets, credit card statements, account holder or wire transfer instructions, and documents recording payments to and from BROWN, including checks, cashiers checks, check registers, wire transfers, receipts and promissory notes.

(ii) Any federal and state income tax returns for NEIL BROWN.

(iii) Address books, phone books, personal calendars, daily planners, journals, itineraries, rolodex indices, and contract lists maintained by NEIL BROWN.

(iv) Correspondence, facsimiles, facsimile cover sheets, and other evidence of communication between NEIL BROWN and any of the Clients, Entities, Individuals, or the director, officer, manager, or trustee of any foreign corporation, trust, or financial institution.

(v) Documents constituting, listing, or describing any corporation, trust, partnership, or other entity, foreign or domestic, created by or on behalf of NEIL BROWN, or for which BROWN serves as a director, officer, manager, agent, or trustee, including articles of incorporation, certificates or licenses of incorporation, bylaws, corporate resolutions, trust agreements, lists of directors, officers, managers or trustees, and abstracts or memoranda.

(vi) Originals and copies of video tapes, audio tapes, and transcripts of any meetings or other communications in which NEIL BROWN, or any employee of the Entities, was a participant.

d. Records of payments by any of the Entities or Individuals for commissions and fees to salesmen and others paid in connection with services rendered for (1) banking or financial services, both foreign and domestic, (2) the formulation and/or maintenance of trusts, corporations, partnerships, contracts, and agreements, (3) the referral of clients, and (4) directors fees.

e. A sample of each of the forms, paper, portfolios, and other supplies used to prepare Client financial profiles or to compile Client information, or to prepare trust and partnership agreements, contracts, agreements, and indentures.

f. Any and all copies of Internal Revenue Service publications and documents, including all correspondence, manuals, and notices from the IRS.

g. Any federal and state income tax returns for the Entities or Clients.

h. Telephone toll records, facsimile cover sheets, correspondence, and other documents reflecting communications among the Entities, Individuals and Clients.

i. Currency, cashier's checks, money orders, and wire transfers in excess of $1,000 in which the payee is any of the Entities, Individuals or Clients.

j. Any safes and safe deposit box keys.

k. Bank records relating to accounts at, or transactions involving, the following financial institutions:

1. Bank of Ireland
2. Ansbacher Ltd. Bank-Jersey (St. Helier)
3. Bank of Dublin
4. U.S. Bank of Nevada, Reno
5. CoreStates Bank, Wilmington, Delaware
6. 1st Union Bank, St. Petersburg, Florida
7. Community 1st Bank, Cheyenne, Wyoming

l. Documents, including the passport of NEIL R. BROWN, and airline tickets, correspondence, itineraries, reservation forms, and receipts, showing travel by BROWN or Clients to Florida, California, Nevada, Wyoming, Ireland, the United Kingdom, Switzerland, the Channel Islands, Luxembourg, the Bahamas, the Cayman Islands, Belize, Turks and Caicos, Netherlands Antilles, and Mexico.

m. Any and all of the above described information that may be stored on magnetic media, including computer hard drives, diskettes, tapes, or any other media capable of storing information in a form accessible through the use of a computer or word processor, including any laptop or notebook computer under the custody, control or ownership of NEIL BROWN.

The agents searching for such information are authorized to search any desktop, other "personal computer", laptop or pc located on the premises to be searched and to copy all above described information stored on such computers. The computer Investigative Specialist, when searching for evidence authorized under the warrant, will take reasonable steps to avoid searching for and viewing documents which are not authorized under the warrant. These steps include the identification of non-pertinent directories and files. The Computer Specialist will not disclose the content of any file not covered under the warrant of the investigators.

In the event that the agents cannot, due to the volume of evidence or for technical reasons, obtain access to any subject computer or cannot search for or copy information contained on that computer, the agents are then authorized to seize such computer and remove it to a laboratory setting for a sufficient, reasonable period of time to obtain access to, search for, and recover the files and financial records described above. In addition, if the files and records described above cannot be read and understood without the software or programs that created those files or records, the agents are authorized to seize such software, including encryption software, and any documentation and manuals that describe such software and give instruction on its installation and use.

The agents searching for such information are also authorized to answer all incoming calls to the business occurring during the execution of the search. Incoming phone calls will be answered to determine the caller's identity and whether the caller is a Client, Individual, or associated with an Entity listed in this Exhibit A, or is otherwise connected to the above mentioned fraudulent activities.